

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

**(DAR ES SALAAM DISTRICT REGISTRY)
MISC CIVIL APPLICATION NO. 99 OF 2021**

(Originating from Civil Application No. 254 of 2017 at the District Court of Temeke)

JACKSON NCHIMBIGILI.....APPELLANT
VERSUS
KALUNDE ABDALLAH.....RESPONDENT

R U L I N G

Date of last order: 20/10/2021
Date of the Ruling: 19/11/2021

MGONYA, J.

The Applicant herein is seeking for an extension of time to file an appeal out of time against the decision of the District Court of Temeke on **Civil Application No. 254 of 2017** delivered on **16th December 2020**.

Parties argued the Application by way of written submission as ordered by the Court. The Applicant submitted his application under section **14 (1) of the law of Limitation Act, Cap. 89**

[**R. E 2019**], supported by an affidavit of **JACKSON NCHIMBIGILI**, the Applicant herein. In the cause of hearing, the Applicant prayed his affidavit to be adopted and form part of his submission.

Submitting in support of the Application, the Applicant briefly stated that, on the 3rd November, 2017 the Respondent herein filed at the District Court of Temeke an application for an extension of time to file Bill of Costs in **Misc. Civil Application No. 194 of 2016**. This application was in respect of the order given in **Misc. Civil Application No. 254 of 2017**. The application was heard and the trial court on the **16th December 2020** granted the extension sought by the Respondent herein.

From that decision, the applicant herein was aggrieved and immediately requested copy of ruling and order to appeal. The Applicant was not availed with the requested Court documents and the applicant kept on making several follow up without success. The ruling and order were not ready until **23rd February 2021**. The applicant collected the documents on the same day, where the prescribed time to appeal has already lapsed hence this application.

The Applicant further submitted that, the delay to file the appeal was not due to his own fault or negligence but rather was

caused by the fact that copy of ruling and order were not ready for collection within time and the court documents are necessary for appeal purposes. Applicant referred **Order XXXIX rule 1(1) of the Civil Procedure Code, Cap 33 [R.E 2019]**, which provides that it is mandatory for the Memorandum of Appeal to be accompanied with copy of the Decree and Judgement. The same was quoted as hereunder,

"....and the memorandum of appeal shall be accompanied by a copy of the decree appealed from of the judgment on which it is founded".

With the view of the legal position established in **Section 14 of the Law of Limitation Act, Cap 89 [R.E. 2019]** the Applicant humbly prayed his Application be granted as he has demonstrated good cause for seeking the extension of time.

On the other hand, the Respondent in the counter affidavit strongly opposed the application as misuse of the court process.

The Respondent further conceded that the application for extension of time to appeal is entirely in the discretion of the court to grant or refuse upon the sufficiently established good cause by the applicant. However, it is the Respondent concern that, the application lacks merit and abuse of the court process as the application seeks to deny the right of the respondent to

recover his costs spent in litigating **Misc. Civil Application No.254 of 2017**. The Respondent prayed to this court not to grant the application and be dismissed with costs.

The issue before this court is whether the applicant has sufficient reasons for the court to grant the sought extension and the court's discretion to exercise its power upon that good cause. This has been outlined in various decision of this court such as cause of delay, length of delay, whether the applicant has accounted for the delay, and degree of prejudice to the respondent and whether there is illegality or any issue of law of sufficient public importance in the decision sought to be challenged.

These conditions have been in number of cases, to name the few are the cases of **LYAMUYA CONSTRUCTION CO. LTD V. REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIANS ASSOCIATION OF TANZANIA**, Civil Application No. 2 of 2010, **SEBASTIAN NDAULA VS. GRACE RWAMAFA**, Civil Application No. 4 of 2014, and the case of **TANGA CEMENT COMPANY VS JUMANNE D. MASANGWA AND ANOTHER**, Civil Application No.6 of 2001, Court of Appeal of Tanzania.

In determining the instant Application, it came to my knowledge that, the Applicant is **praying for extension of time**

to file an appeal against an order of the Temeke District Court which granted the Respondent with extension to file his application for bill of costs.

This is a simple application for one to obtain his costs after litigation. It is not that the Applicant was aggrieved with the decision of **Misc. Civil Application 194 of 2016**. Had it be that there was an issue that made the Applicant aggrieved for that decision, I could have thought of granting this Application. However, by this Court to grant this Application will be for sure an abuse of court process and hinderance to the Respondent's right on security for costs of which he deserves after litigation and grant of extension of time thereto.

It is from the above reasoning, this application is hereby **DISMISSED for being both misconceived and lack of merit**. Respondent to have his cost from the Applicant.

It is so ordered.

L. E. MGONYA

JUDGE

19/11/2021

Court: Ruling delivered in chambers in the presence of Mr. Katemi, Advocate for the Applicant, absent of Respondent and Mr. Richard RMA.



A handwritten signature in blue ink, appearing to read "Mgonya".

L. E. MGONYA

JUDGE

19/11/2021

ORIGINAL